



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

OPNAVINST 11000.17
N44 /688-99
17 Sep 99

OPNAV INSTRUCTION 11000.17

From: Chief of Naval Operations

Subj: NATIONAL HISTORIC PRESERVATION ACT CONSULTATIONS RELATED
TO BASE REALIGNMENT AND CLOSURE (BRAC) ACTIONS

Ref: (a) SECNAVINST 4000.35

Encl: (1) Department of the Navy Policy Memo 98-07

1. Purpose. To clarify existing policy regarding consultation under Section 106 of the National Historic Preservation Act (NHPA) in special circumstances related to compliance with BRAC legislation.

2. Background. Reference (a) provides policy and assigns responsibilities within the Department of the Navy (DON) for fulfilling requirements of the National Historic Preservation Act (NHPA). Enclosure (1) provides DON policy on termination of Section 106 consultation during the process of base realignment and closure actions.

3. Responsibilities

a. The Chief of Naval Operations (CNO) shall consider the NHPA Section 106 termination recommendations provided by field activities and regional commands and endorsed by Installation Management Claimants (IMC's). CNO shall provide coordination with the Secretary of the Navy via Assistant Secretary of the Navy (Installations & Environment) in accordance with enclosure (1).

b. Installation Management Claimants shall ensure subordinate commands execute the policy described in enclosure (1). IMC's shall notify CNO (N44) if a non-Navy party terminates consultation.

c. Regional Commanders, Commanding Officers, and OIC's upon an announcement of the decision to close, realign or dispose,

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but prior to actual closure, realignment or disposal, as applicable, shall:

- (1) Immediately initiate the NHPA Section 106 process.
- (2) Promptly notify the Local Redevelopment Authority (LRA) of the Section 106 process and any historic properties that exist on the BRAC activity.
- (3) Use all available means to ensure dialogue between historic preservation interests and the LRA as early as possible in the BRAC process.
- (4) Seek subject matter expertise from the Cultural Resources Manager at the appropriate Naval Facilities Engineering Command, Engineering Field Division.
- (5) Pursue consultation, negotiation and consideration of alternatives to the fullest extent practicable and ensure that all reasonable and good faith efforts have been made to identify ways to reduce or avoid adverse effects on historic properties from base closures and associated realignments and disposals. Alternatives should include conveyance of properties with restrictive covenants or other available protection to reduce or avoid adverse effects on historic properties from base closures and associated realignments and disposals. Public sale with restrictive covenants is not appropriate if the restrictive covenants are inconsistent with the LRA's plans.
- (6) Initiate recommendations to terminate consultation only when it can be documented that the consultation process has been utilized to the fullest extent practicable and no agreement has been achieved. Recommendations shall comply with the requirements of enclosure (1).
- (7) Take no actions or make no final decision that may adversely affect the historic resource until the Secretary of the Navy officially terminates consultation and responds to final comments from the Advisory Council on Historic Preservation.
- (8) Cooperate to the fullest extent practicable as permitted by law with appropriate Native American tribes, other interested parties, and/or State Historic Preservation Officers,

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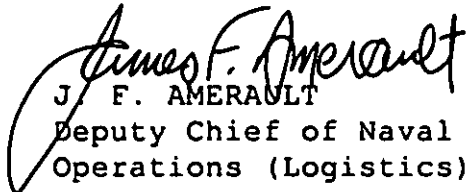
when an adverse effect on National Register eligible or listed buildings, structures, or archeological sites may result from termination of consultation. Work with these groups to develop mitigation that is commensurate with the loss of the resource and in the best interest of the public.

(9) Notify the chain of command if termination of consultation occurs by a non-Navy party.

d. Naval Facilities Engineering Command shall:

(1) Provide subject matter expertise to Navy commands and liaison support with State Historic Preservation Officials as necessary to ensure all good faith efforts have been made to reduce or avoid adverse effects on historic properties.

(2) Assume any outstanding NHPA responsibilities upon assumption of facility custody.


J. F. AMERAULT
Deputy Chief of Naval
Operations (Logistics)

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DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS (N4)
COMMANDANT OF THE MARINE CORPS (LF)

OPNAVINST 11000.17
21 Aug 98

Subj: DEPARTMENT OF THE NAVY POLICY MEMORANDUM #98-07

Ref: (a) National Historic Preservation Act (NHPA) of 1996, as amended, 16 U.S.C. 470-470w-6
(b) 36 CFR 800, "Protection of Historic Properties", Regulations of the Advisory Council on Historic Preservation Governing the Section 106 Review Process
(c) Defense Base Closure and Realignment Act of 1990, Public Law 101-510, 10 U.S.C. 2687 note

1. Purpose. To clarify Department of the Navy (DON) policy regarding consultation under Section 106 of the National Historic Preservation Act in special circumstances related to compliance with Base Closure and Realignment legislation.

2. Background:

a. Section 106 of reference (a) requires Federal agencies to:

(1) take into account the effect of their undertakings on properties listed in, or eligible for listing in, the National Register of Historic Places; and

(2) afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment with regard to such undertakings.

b. Reference (b) delineates the process for meeting the requirements of Section 106. Steps in the process include identification of historic properties that may be affected by an undertaking, assessing the effects of the undertaking, and consultation with the appropriate State Historic Preservation Office (SHPO), the Council, and interested parties. The purpose of consultation is to seek ways to avoid or reduce any adverse effects. Consultation usually results in a written agreement that stipulates mitigation measures. In some instances, however, consultation may fail to produce agreement. In such cases, the DON may terminate consultation and request final comments from the Council. The Council or the SHPO may also terminate consultation.

Enclosure (1)

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c. Reference (c) expands the scope of factors that the DON must take into account in its decisions regarding treatment of historic properties at closing installations. The DON must consider factors that include the highest and best use of the property, certain statutory provisions for the homeless and local reuse plans and economic development alongside traditional preservation considerations. These additional considerations may lead the DON to terminate consultation without agreement.

3. Policy:

a. The DON:

(1) will initiate the Section 106 process immediately after making a decision to close, realign, or dispose of property in accordance with reference (c);

(2) will promptly notify the Local Redevelopment Authority (LRA) of the Section 106 process and any historic properties that exist on BRAC activities;

(3) will use all available means to ensure dialogue between historic preservation interests and the local reuse authorities as early as possible in the BRAC process;

(4) will pursue consultation, negotiation and consideration of alternatives to the fullest extent practicable and ensure that all reasonable and good faith efforts have been made to identify ways, including but not limited to conveyance of properties with restrictive covenants or other available protection, to reduce or avoid adverse effects on historic properties from base closures and associated realignments and disposals;

(5) will not initiate a recommendation to terminate consultation until it can be documented that the consultation process has been utilized to the fullest extent practicable and no agreement has been achieved;

(6) will not take any action or make a final decision that may adversely affect the historic resource that is the subject of consultation until the 106 consultation is complete;

(7) will, in cases where an adverse effect on National Register eligible or listed buildings, structures or archeological sites may result from termination of consultation, cooperate to the fullest extent practicable and permitted by law

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with the appropriate Native American tribe, other interested parties, and/or State Historic Preservation Officer to develop mitigation which is commensurate with the loss of the resource and in the best interest of the public.

b. The offer of historic properties for public sale, with a restrictive covenant, pursuant to a 106 consultation is not appropriate where, if the sale should be successful, the local reuse plans for the property would be substantially defeated.

4. Procedures. Within DON, authority to terminate consultation in cases related to base closures and realignments is retained by the Secretary of the Navy. If special circumstances such as those identified in 2.c. (above) suggest that termination of consultation is appropriate, the following procedures will be followed:

a. The Chief of Naval Operations or the Commandant of the Marine Corps may recommend termination of consultation to the Secretary via Assistant Secretary of the Navy (Installations and Environment) (ASN(I&E)). The recommendation will include a description of the proposed undertaking, a list of the consulting parties a discussion of which issues are in dispute among the consulting parties, a copy of any Memorandum of Agreement that consultation may have produced, and a detailed explanation of why termination is recommended. The recommendation will also include, as a separate enclosure, all documentation specified in reference (b), which will be forwarded to the Council if consultation is terminated.

b. If the Secretary does not concur with the recommendation to terminate consultation, such non-concurrence will be communicated to the Chief of Naval Operations or the Commandant of the Marine Corps, and Section 106 consultation will continue to completion, following the standard procedures outlined in reference (b).

c. If the Secretary concurs, the Secretary will notify the consulting parties of failure to agree and termination of consultation, submit full documentation, and request Council comment on the proposed undertaking. No final decision on the undertaking will be made until Council comments are received and taken into account, and no actions will be taken that might foreclose the Council's opportunity to comment on the proposed undertaking.

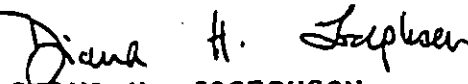
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d. The Secretary will forward Council comment to the Chief of Naval Operations or the Commandant of the Marine Corps for consideration and preparation of a response.

e. The Chief of Naval Operations or the Commandant of the Marine Corps will recommend a final decision on the undertaking to the Secretary via ASN(I&E). The Secretary will make the final decision on the proposed undertaking and notify the Council and the chain of command. The decision will then be implemented.

f. If another party terminates consultation, the Chief of Naval Operations or the Commandant of the Marine Corps will notify ASN(I&E) of the circumstances of the termination and recommend further DON action.

5. Responsibility. The Chief of Naval Operations and the Commandant of the Marine Corps will issue implementing instructions as necessary within 120 days.


DIANA H. JOSEPHSON
Acting